

STATEMENT OF SENATOR JOHN McCAIN  
CHAIRMAN, SENATE COMMITTEE ON  
COMMERCE, SCIENCE, AND TRANSPORTATION  
FULL COMMITTEE HEARING  
ON S. 96 - Y2K ACT  
FEBRUARY 9, 1999

We will now proceed to our hearing regarding one of the most important issues before us this year, prevention and limitation of Y2K lawsuits which will result from product and computer system failures associated with the transition of date coding from 1999 to 2000, the so-called "Y2K problem." The massiveness of the potential disruption to our nation's economy, both from the anticipated Y2K problems, as well as from the inevitable years of resulting litigation, require intervention by Congress. We need to provide incentives for making January 1 a non-event, rather than a bonanza for those who sue.

S. 96 is intended to accomplish this goal. I have worked with a number of other colleagues who are similarly concerned and who are, or will become, co-sponsors, including Senators Gorton, Abraham and Frist. I put S.96 on the table to begin a discussion of the issues. We have had discussions with various stakeholders, and will be amending the bill to reflect additional ideas and suggestions. The purpose of this hearing today is to elicit discussion of the issues which we need to consider and address. I appreciate the widespread interest in this matter, and am pleased that we have received written testimony from a number of entities in addition to those who are testifying today. We have received written testimony from Business Software Alliance, National Association of Manufacturers, and the National Association of Computer Consultant Businesses. I thank each of them for their comments, which will be included as part of the hearing record.

Opportunistic lawyers are already filing suits to reap the benefits of this issue, and the calendar still reads February, 1999. These lawsuits are sheer craziness and represent ambulance chasing at its worst. They are clear and convincing evidence that we will face a rash of Y2K lawsuits in the coming year. They are absolute confirmation that Y2K litigation is not about consumers, but about making wealthy lawyers even wealthier.

The cost of fixing all the potential Y2K failures is astronomical, estimates are somewhere between \$200 billion and \$1 trillion. The cost of litigation is likewise staggering, with estimates nearing the \$1 trillion dollar mark. It is more than a simple waste of our resources to devote \$1 trillion to litigation - it is a major impediment to the stability of our economy. This is an incredible amount of money, and with it comes the temptation for many to take advantage of the situation and line their pockets by encouraging a litigious approach to the problem.

The approach we are taking with this bill is simply to encourage corrective actions - both proactively before January 1, and as the problems become apparent after the New Year. It is my belief that our nation will be better off if people work together on solving the Y2K problem rather than spend their time and money in court. Certainly the Y2K problems should be addressed and fixed, but let's encourage cooperative efforts to that end, and insert practicality into the determination of damage. This approach, I believe, is the most logical way to deal with this problem. We don't need to restructure the courts; we don't need to react as though the sky is falling. We need a common sense approach. When people sue over a Y2K problem, it will not be because of the phenomenon of transitioning from 1999 to 2000, it will be because a product or system does not operate as it should.

Many of the potential disputes are covered by specific contractual provisions, and these should be honored. Where a contract does not make provision for Y2K failure, or in those instances where no contract exists, the guideline should be that those who make a good faith effort to prevent or resolve computer date coding failures are not punished for their attempted actions. They should be held to make repairs, replace, or refund, as appropriate, and make the harmed party whole. I want to be clear that there is no intent for the legislation to cover wrongful death or physical injury cases. Those cases would still be addressed in accordance with current law.

The bill itself is still a "work-in-progress" and I am looking forward to hearing the testimony today and working with my colleagues to complete our drafting efforts and move legislation as quickly as possible. Time is running out on this issue. If we are going to establish incentives for proactive conduct, we must allow sufficient time for companies to take advantage of the incentives and get the work done. This will be impossible unless Congress takes action soon. Setting the rules next year, or even in October, does no one any good.

Now, I would like to welcome our first witnesses today, Senators Bennett and Dodd who together head up the Senate's special committee on Y2K issues. They are joining us today to provide a background of the insights their committee has gained through extensive study and discussion of these issues. Thank you both for taking time from your busy schedules to be with us this morning.